

STATE OF MICHIGAN
COURT OF APPEALS

SCHNEIDER NATIONAL CARRIERS, INC.,
SCHNEIDER TRANSPORT, INC., SCHNEIDER
NATIONAL BULK CARRIERS, INC.,
SCHNEIDER TANK LINES, INC. and
SCHNEIDER SPECIALIZED CARRIERS, INC.,

UNPUBLISHED
May 14, 1999

Plaintiffs-Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF
TREASURY, CONSUMER AND INDUSTRY
SERVICES DEPARTMENT and MICHIGAN
PUBLIC SERVICE COMMISSION,

No. 208346
Court of Claims
LC No. 96-016473 CM

Defendants-Appellees.

Before: Fitzgerald, P.J., and Doctoroff, and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the Court of Claims' order granting defendants' motion for summary disposition pursuant to MCR 2.116(C) (7), (8), and (10) and denying plaintiffs' motion for partial summary disposition and alternative motion to refer the issues to the United States Department of Transportation. We reverse.

After the Court of Claims' decision in the instant case, this Court decided *Yellow Freight System, Inc v Michigan*, 231 Mich App 194, 201; 585 NW2d 762 (1998), involving the same issue. The *Yellow Freight* Court concluded

that the agency's interpretation of the statute was reasonable. [Referring to the ICC's decision in *American Trucking Ass'n Ins -- Petition for Declaratory Order - - Single State Ins Registration*, 9 ICC2d 1184 (1993).] In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before

November 15, 1991. Plaintiff's voluntary payment of fees not due and owing does not affect our analysis. [*Id.* at 201.]

Like the instant plaintiffs, Yellow Freight had paid more in fees to Michigan in 1992 than in 1991. It had also paid the 1992 fees before November 15, 1991. *Id.* at 198-199. In concluding that the plaintiffs in *Yellow Freight* were entitled to a refund, this Court reasoned that

deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v General Motors Corp*, 134 Mich App 429, 432; 351 NW2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705, 713; 552 NW2d 679 (1996), citing *Chevron USA, Inc v Natural Resources Defense Council, Inc*, 467 US 837, 844; 104 S Ct 2778; 81 L Ed 2d 694 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period of time that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in *any* year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue" *Chevron, supra* at 843, n 9. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra*. [*Id.* at 200-201.]

Given the resolution of this issue by *Yellow Freight*, summary disposition in favor of defendant is reversed and the case is remanded for a calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Martin M. Doctoroff
/s/ Helene N. White